

UNITED STATES GOVERNMENT

memorandum

Date: March 16, 1998

Reply to Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30315

Subject: **Monthly Report - February 1998**

To: **Wallace H. Cheney**, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
Pending on 1st		113								
Rec'd in month	39	55								
Recons. rec'd	0	03								
Ans'd in month	22	49								
Pending at End	117	118								
Over 180 days	06	03								

B. Tort Claim Investigation Status: As of February 28, 1998

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
Pending	40	8	0	3	9	4	9	10	4	0	3	7	3	5
Over 60 days	9	1	0	0	0	1	3	3	1	0	0	1	0	0

C. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12										
Rec'd in month	21	09										
Ans'd in month	10	18										
Pending at End	24	21										
Over 30 days	04	04										

D. FOIA Requests for records: As of February 28, 1998

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
Pending	5	6	0	0	0	0	1	1	1	0	0	1	1	0
Over 30 days	2	0	0	0	0	0	0	1	0	0	0	0	0	0

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515										
New Cases	16	2										
Habeas Corpus	10	1										
FTCA	0	0										
Bivens	5	1										
Other	1	0										
Bivens/FTCA	0	0										
Lit Reports	11	1										
Cases Closed	77	9										

B. SETTLEMENTS AND AWARDS: NONE

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. FRESON v. U.S. & ANTHONY RICHARDSON,
97-1373-CIV-GRAHAM - Southern District of Florida

A deposition of the plaintiff was taken on February 5, 1998. In this FTCA/Bivens case the plaintiff, a private mail courier by the name of Richard Freson, was being escorted off institution grounds as he was being verbally abusive of staff and was generally disruptive in FCI, Miami's front lobby. Lt. Anthony Richardson, Bivens defendant, was the escorting staff member. While escorting Freson verbal insults were exchanged between the two men. This situation was escalated when Freson, by several staff witnesses accounts, attempted to punch Lt. Richardson. Lt Richardson evaded the punches of Freson and returned one punch to Freson's face. Freson fell striking the U. S. Flag pole. Freson's injuries included a contusion and laceration in the middle of his forehead. Freson claims 1st, 4th and 5th Amendment violations, as well as common law torts.

2. PORTO v. UNITED STATES,
96-8337-CIV-HURLEY - Southern District of Florida

On February 23 through February 26, 1998, the depositions of three (3) Doctors and the Plaintiff were taken. In this FTCA case the plaintiff alleges negligent diagnosis and treatment of a toe lesion, while he was incarcerated at FCI, Jesup, resulting in the amputation of his leg (below the knee).

3. SULAYMAN v. UNITED STATES, CV-297-118, Southern.

District of Georgia

On February 27, 1998, the plaintiff was deposed. In this EEO case, the plaintiff seeks to retain his position at FCI Jesup. The plaintiff claims he was demoted from Chief Medical Officer in retaliation for a sexual harassment charge filed against him.

D. RELIGIOUS CASES: No new cases.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None

G. CRIMINAL CASES:

DEFENDANT(S): SCHREIBER, Harry, Reg. No. 40454-004

Institution: FCC Coleman -Low

Date of Offense: Various

Type of Case: Potential Criminal Prosecution

Description: A review of telephone monitoring tapes has indicated that inmate Schreiber may be participating in the management of a Health Maintenance Organization through which he may be attempting to commit fraud. Inmate's Schreiber's current offense involves bankruptcy fraud, wire fraud, and concealment of assets, and a specific condition of his Judgment and Commitment Order directs that he is not to become involved in management of an HMO.

Status of Referral: Referred to local FBI on 01/13/98. Local FBI have referred further investigation to the FBI in C.D. Ca., and the U.S. Attorney's Office in W.D. Tex., which originally investigated and prosecuted inmate Schreiber's current offense.

DEFENDANT: William Raymond Hock

Institution: FCI, Tallahassee

Case Name: U.S.A. vs. William Raymond Hock, Case No. 4:97cr75-RH

Description: Sexual abuse of inmate by staff member. Trial begins on Monday, March 16 in Tallahassee. The officer is charged with violating 18 U.S.C. §2243(b). While the Office of Inspector General is handling the lead on the case, Warden Greer has indicated he wants Dan Rouse to attend to assist with the interests of the institution. Thirteen (13) staff members have been subpoenaed by

the defense.

III. TRAVEL AND LEAVE SCHEDULE FOR March 1998:

Sherree L. Sturgis

Travel - None scheduled

Annual Leave - None Scheduled

Van Vandivier

Travel - None scheduled

Annual Leave - None Scheduled

Earl Cotton

Travel - None scheduled

Annual Leave - None scheduled

Gere Gooden

Travel - None scheduled

Annual Leave - None scheduled

Patty Dejunear

Travel - None scheduled

Annual Leave - None scheduled

cc: Regional Director and Deputy Regional Director, SER
All SER Wardens
All Regional Counsel and Associate General Counsel
All SER institution attorneys and paralegals

UNITED STATES GOVERNMENT

memorandum

Date: March 11, 1998

Reply to Henry J. Sadowski, Regional Counsel, Northeast Region
Attn of: Federal Bureau of Prisons, Philadelphia, PA 19106

Subject: Monthly Report - February 1998

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	110	91									
Rec'd in month	113	155									
Ans'd in month	132	100									
Pending at End	91	146									
Over 30 days	0	0									

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	236	262									
Rec'd in month	77	73									
Recons. rec'd	3	2									
Ans'd in month	54	76									
Pending at End	262	261									
Over 180 days	0	0									

C. Tort Claim Investigation Status: As of February 28, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	3	13	3	0	1	4	6	9	13	2	4	2	5	28*	8
Over 60 days	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1

* One inmate accounts for 23 of these filings.

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13										
Rec'd in month	34	28										
Ans'd in month	58	35										
Pending at End	13	9										
Over 30 days	1	1										

E. FOIA Requests for records: As of February 28, 1998

	ALF	ALM	ALP,ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	0	0	1	1	0	0	0	0	0	0	0	0	0
Over 30 days	0	0	0	0	1	0	0	0	0	0	0	0	0	0

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604										
New Cases	13	15										
Habeas Corpus	5	7										
FTCA	1	4										
Bivens	1	2										
Other	4	2										
Bivens/FTCA	2	0										
Lit Reports	8	10										
Cases Closed	66	7										

B. SETTLEMENTS AND AWARDS:

1) Kagan v. United States, CV 94-3663 (DNJ)
This wrongful death civil action originated as a Bivens action filed by the next of kin of inmate Philip I. Kagan, Reg. No. 14361-050, who died in September 1993 at FCI Schuylkill. The complaint alleges that the deceased was denied adequate medical treatment for a known heart condition. As a result, the deceased's health allegedly deteriorated until he lapsed into a coma and died of complications caused by cardiac and pulmonary failure. The District Court dismissed the action in August 1995. On appeal, the Third Circuit held that, although Plaintiff failed

to state a claim under Bivens, he did state a cause of action under the Federal Tort Claims Act, 28 U.S.C. § 2671,

et seq. (FTCA). On remand, the case was converted to an FTCA case and settled for \$10,000.00. Settlement was based upon potential exposure to liability and a relatively small amount in a wrongful death case.

2) Markoff v. United States, Civil Action No. 96-2543 (DNJ) This Federal Torts Claim Act complaint was filed by former inmate Morton Markoff, 11116-050, who alleges that as a result of improper medical care while housed at the Federal Correctional Institution, Ft. Dix he suffered a permanent injury and resulting loss of function to his right ring finger and left elbow and arm. The Plaintiff was a practicing medical doctor prior to his incarceration. Settlement for \$45,000.00 was approved since there was some exposure based on a delay in medical treatment.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1) United States v. Camacho-Negron, (MDPA) -- On February 11, 1998, Tom Mueller, Attorney Advisor, FCC Allenwood, assisted at a committed fine hearing before Magistrate Judge Askey. At the conclusion of the hearing, the Magistrate found inmate Antonio Camacho- Negron, Reg. No. 03587-068, to be indigent and he was released on February 13, 1998.

2) Conference re: Attorney visiting privileges

Attorney Patrick Stiso was indicted on charges of racketeering, conspiracy to distribute narcotics, and obstruction of justice. As a result of the indictment, the Wardens at MCC NY and MDC Brooklyn suspended Mr. Stiso's attorney visiting privileges at their respective institutions. The attorney representing Mr. Stiso filed an appeal of the Wardens' decisions with the Regional Director. The Regional Director denied the appeal. On March 5, 1998, a status conference was held before the U.S. District Judge Denny Chin, the judge assigned to Mr. Stiso's prosecution. Mr. Stiso's criminal attorney presented arguments concerning his suspension of visiting privileges from MCC New York. Clinton Stroble, Attorney Advisor, MCC NY, attended the conference with Assistant United States Attorney Richard Sullivan, and argued the government's position. The court requested a brief addressing

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his jurisdiction to consider the issue.

D. RELIGIOUS CASES:

1) Muhammad v. Lamer, et. al, 4:CV-97-1980, (MDPA) - Inmate William Davidson Muhammad, Reg. No. 00471-000, alleges in this Bivens action that his religious rights were violated by his placement in the SHU in October 1996. He alleges the chaplain showed favoritism to other religious groups. The Plaintiff does not mention RFRA.

E. ENSIGN AMENDMENT CASES: None.

F. PLRA 1915 DISMISSALS: None.

III. TRAVEL AND LEAVE SCHEDULE FOR MARCH 1998:

Hank Sadowski -

Travel - March 6 - Alternate Dispute Resolution (ADR) Training, Philadelphia, PA.

Annual Leave - None Scheduled

Mike Tafelski -

Travel - March 6 - ADR Training, Phila., PA
March 12 - FCI Fairton

Annual Leave - None Scheduled

Joyce Horikawa -

Travel - March 6 - ADR Training, Phila., PA
Annual Leave - March 20 - March 25

Ron Hill -

Travel - None Scheduled
Annual Leave - None Scheduled

Les Owen -

Travel - March 17-19 -- MCC New York
Annual Leave - March 2-6

Rosalind Bingham -

Travel - None scheduled
Annual Leave - None Scheduled

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Personnel notes:

Rosalind Bingham has successfully completed the Paralegal Training Program and is scheduled to graduate on March 17, 1998.

Joyce Horikawa is reporting to FCI Fort Dix on March 16, 1998. I thank Joyce for her professionalism and for the fine work she has provided to this office over the last four

years.

cc: Regional Director and Deputy Regional Director, NER
All NER Wardens
All Regional Counsel and Associate General Counsel
All NER institution attorneys and paralegals

UNITED STATES GOVERNMENT

memorandum

Date: April 7, 1998

Reply to Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30315

Subject: Monthly Report - March 1998

To: Wallace H. Cheney, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
Pending on 1st		113	69							
Rec'd in month	39	55	88							
Recons. rec'd	0	03	04							
Ans'd in month	22	49	69							
Pending at End	117	118	107							
Over 180 days	06	03	01							

B. Tort Claim Investigation Status: As of March 31, 1998

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
Pending	33	6	0	2	9	0	4	5	2	0	3	8	3	9
Over 60 days	1							1						

C. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18									
Rec'd in month	21	09	18									
Ans'd in month	10	18	22									
Pending at End	24	21	19									
Over 30 days	04	04	03									

D. FOIA Requests for records: As of March 31, 1998

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
Pending	5	3	0	0	0	1	0	0	0	1	1			

4
Over 30 1 2
days

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525									
New Cases	16	2	18									
Habeas Corpus	10	1	9									
FTCA	0	0	2									
Bivens	5	1	6									
Other	1	0	1									
Bivens/FTCA	0	0	0									
Lit Reports	11	1	2									
Cases Closed	77	9	8									

B. SETTLEMENTS AND AWARDS: NONE

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Johnson v. Moore
Case No. CV297-33 (S.D. Ga.)

This case has been set for trial on April 9, 1998. This is Bivens case where the plaintiff alleges that a Correctional Officer forced him to clean a bathroom which was beyond his capabilities and in violation of his medical restriction. This will be a bench trial. Patty DeJuneas will be traveling to Brunswick, Georgia, to provide trial assistance.

2. Gelis v. Wooten, et al.
Case No. CV297-23 (S.D. Ga.)

This case has been set for trial April 20, 1998. This is a Bivens case where the plaintiff alleges there was a conspiracy to deny him hip replacement surgery and rehabilitative physical therapy. This will be a jury trial. We anticipate providing attorney assistance, but have not yet determined who will attend the trial in Brunswick, Georgia.

3. Sulayman v. Reno
Case No. CV297-118 (S.D.Ga.)

This is the Jesup EEO case filed by a doctor claiming he was discriminated against because he had befriended a contract worker who had filed an EEO claim. This doctor had been removed as Chief Medical Officer and later transferred

to Talladega as a result of a focus review. He appears to be claiming this was a pretext for the discriminatory motive. This case is a problem because two correctional health care administrators at Jesup had participated in sexually harassing actions with other (not Dr. Sulayman) health service staff. Sulayman seeks to make his own case by bringing out the facts of these other situations and Judge Alaimo has allowed in spite of our objections. Unfortunately, Judge Alaimo has extended discovery for the plaintiff for the third time. We believe he will want to depose Dr. Moritsugu and Regional Director Matthews, among others.

4. Byrd v. Hasty

Case Numbers: 3:96-CV-289-LAC/SMN (Northern District of Florida); 97-2129 (Eleventh Circuit Court of Appeals)

This case is a habeas corpus action in which the inmate challenges the refusal of the Bureau to allow him to participate in the DAP because his current was found to be a crime of violence by reason of a two-point enhancement at sentencing for possession of a firearm. Oral argument in the Eleventh Circuit is scheduled for 4-16.

D. RELIGIOUS CASES: No new cases.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None

G. CRIMINAL CASES:

DEFENDANT (S): Eric Paul Pinto 15603-069

Institution Tracking No.: (If any)

Name of Case: (U.S. v. Eric Paul Pinto)

Court: (Not available)

Docket No.: (Not available)

Institution: MDC, Guaynabo

Date of Offense: January 20, 1998

Description: Inmate who seriously assaulted correctional officer. Inmate is currently housed under 24-hour observation with a camera recording all movement inside his cell. Psychiatrists appointed by prosecution and defense evaluated inmate and submitted reports to the court. The reports found defendant incompetent (schizophrenic) at the time the crime was committed but found him competent to stand trial. The US Attorney's Office will dismiss the case

on the basis of defendant's incompetence at the time of the offense but will urge the Court to enter an order precluding this individual from entering the United States.

III. TRAVEL AND LEAVE SCHEDULE FOR April 1998:

Sherree L. Sturgis

Travel - Tallahassee April 14, 1998 (meeting with City of Tallahassee officials about road realignment issues; Denver (Sentencing Training) April 26-May 3, 1998
Annual Leave - None Scheduled

Van Vandivier

Travel - 5-11 to 5-20, MSTC, DHO Training as Resource Personnel
Annual Leave - April 16 (4 hours) & 17 (8 hours)

Earl Cotton

Travel - None Scheduled
Annual Leave - None scheduled
Military Leave 4-27 to 5-18

Gere Gooden

Travel - None scheduled
Annual Leave - None scheduled

Patty DeJuneas

Travel - Brunswick - April 8 & 9 (Johnson Trial)
Annual Leave - None scheduled

Saku Hapinto - TDY to ATL 5-4 to 5-8

cc: Regional Director and Deputy Regional Director, SER
All Regional Counsel and Associate General Counsel

UNITED STATES GOVERNMENT

memorandum

Date: May 7, 1998

Reply to Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30315

Subject: **Monthly Report - April 1998**

To: **Wallace H. Cheney**, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89							
Rec's in month	39	55	88	38								
Recons. rec'd	0	3	4	2								
Ans'd in month	22	49	69	52								
ending at end	117	118	107	103								
ver 180 days	6	3	1	3								

B. Tort Claim Investigation Status: As of April 30, 1998

	ATL	C O L	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	40	5	0	2	4	2	4	6	3	0	0	9	5	9
>60 DAYS	6	1	0	0	0	0	0	0	0	0	0	2	0	0

C. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18	19	21							
Rec'd in month	21	9	18	19								
Ans'd in month	10	18	22	26								
Pending at end	24	21	19	25								
Over 30 days	4	4	3	6								

D. FOIA Requests for records: As of April 30, 1998

	ATL	C O L	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	4	8	0	1	0	1	0	0	0	0	1	2	4	0
>30 DAYS	1	3	0	0	0	0		0	0	0	0	2	0	0

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535								
New Cases	16	2	18	15								
Habeas Corpus	10	1	9	6								
FTCA	0	0	2	2								
Bivens	5	1	6	5								
Other	1	0	1	2								
Bivens/FTCA	0	0	0	0								
Init Reports	11	1	2	5								
Cases Closed	77	9	8	5								

B. SETTLEMENTS AND AWARDS:

Romero, et al. v. U.S., Case No. 1:95cv151-MP (N.D.Fla.)
 These are claims by the inmates who are plaintiffs in the bus cases. We have begun to pay the settlements administratively for the claims of those plaintiffs whose claims are under \$2,500. Three of the five have been paid to date. (Azofra - \$2,000; Guzman - \$2,000; and Diaz \$550) The U.S. Attorney's Office submitted the vouchers for payment of ten other settlements to the GAO on 4/13/98. (One plaintiff (Gallego), against the advice of his attorneys, has rejected the settlement offer. There is one Plaintiff (Olivares) counsel admits they cannot find.)

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Johnson v. Moore
 Case No. CV297-33 (S.D. Ga.)

This case was tried on April 9, 1998. This was Bivens case where the plaintiff alleges that a Correctional Officer forced him to clean a bathroom which was beyond his capabilities and in

violation of his medical restriction. This was a bench trial. The judge returned a verdict for the defendant. Patty DeJuneas traveled to Brunswick, Georgia, to provide trial assistance.

2. Gelis v. Wooten, et al.
Case No. CV297-23 (S.D. Ga.)

This case had been set for trial April 20, 1998. This is a Bivens case where the plaintiff alleges there was a conspiracy to deny him hip replacement surgery and rehabilitative physical therapy. The District Court has taken this case off the docket pending resolution of the interlocutory appeal on qualified immunity.

3. Byrd v. Hasty
Case Numbers: 3:96-CV-289-LAC/SMN (Northern District of Florida); 97-2129 (Eleventh Circuit Court of Appeals)

This case is a habeas corpus action in which the inmate challenges the refusal of the Bureau to allow him to participate in the DAP because his current offense was found to be a crime of violence by reason of a two-point enhancement at sentencing for possession of a firearm. Oral argument in the Eleventh Circuit was scheduled for 4-16. Sherree and Van went to observe the argument. All were surprised when the inmate's counsel failed to appear. The court will decide the case based on briefs. The inmate's counsel has written a letter indicating he had miscalendared the date of the oral argument and profusely apologizing to the court and all who were inconvenienced.

4. Wirth v. Federal Bureau of Prisons, et al.
Case Number 98-A-2008-N (M.D. Ala.)

This is a Bivens case with 22 named individual defendants. The defendants include several high-ranking employees who are in different locations. At least three of the defendants have retired. In the lengthy complaint, the Plaintiff alleges, among other things, a conspiracy to retaliate for exercise of First Amendment Rights, a deprivation of due process in an inmate discipline hearing, denial of a year off under 18 U.S.C. 3621, submission of false information to the court, transfer to impede his access to counsel and improper assignment of a management variable. He seeks unspecified compensatory and punitive money damages. This is also the case where TDG Attorney Craig Simmons is accused of falsifying documents because of an error he made in a declaration in a previous case.

5. Alexander v. Hawk, et al.
Case Number 96-276-CIV-OC-10 (M.D.Fla.)
Appeal Number 96-3752 (11th Circuit)

This case began as a challenge to the implementation of the Ensign Amendment. The District Court dismissed the case, sua sponte and before service of process, on the ground that the PLRA requires exhaustion of administrative remedies. The inmate appealed. The Eleventh Circuit appointed counsel. Both counsel and the inmate requested that counsel be allowed to withdraw. This was denied. The DOJ Appellate Section has taken an interest in this case. Peter Maier is handling it. Consolidation with Michael Henry Smith v. BOP, App. No. 97-6663, was requested but this was denied. The SG has approved participation by the U.S. as amicus, and a motion requesting to file an amicus brief has been submitted to the 11th Circuit.

6. Kiser v. Hawk, No. 97-195-Civ-Oc-10B, FFLM

In this case, COL inmate Stanley Kiser (16395-004) challenged the BOP's decision to deny him eligibility for a reduction in sentence for successful completion of the residential DAP program. We had denied his eligibility after he completed the institution portion of the program at TAL. The basis for our denial was that he is an old law inmate to whom the DAP early release provisions do not apply. The court ruled in our favor on 4-30-98.

D. RELIGIOUS CASES: No new cases.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None

G. CRIMINAL CASES:

1. **DEFENDANTS(S): Anthony Battle #11451-056**
Institution Tracking No.: ATL-94-4170
Name of Case: U.S. v. Battle
Court: FGAN
Docket No.: 1:95-CR-528

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Institution: ATL

Date of Offense: 12/21/94

Type of Case: Criminal Prosecution

Description: Inmate convicted of homicide Officer D'Antonio Washington.

Special Monitoring: Assigned to special monitoring

Status of Referral: Accepted.

Update: Convicted and sentenced to death, 1997. Appellate briefs filed by both prosecution and defense. Housed in Alabama DOC facility. DOC would like for us to move him. Seeking to work out problems with DOC and exploring other possible state placements.

Assigned to: AUSA Bill McKinnon, Jan Jenkins FBI: Tyrone Smith

2. United States v. Jaime Rosado Rosario, Cr. No.: 97-049, D.P.R.

Institution: MDC Guaynabo

Date of Offense: November 22, 1996

Type of Case: Criminal Prosecution

Trial commenced on March 31, 1998. Defendants in this case

are charged with arranging and carrying out the murder of a federal witness from within the MDC. Although requested by the prosecution, this case was not certified to carry the death penalty. Defense counsel and AUSAs have subpoenaed several staff members (i.e. Health Services Administrator and his Assistant, SIA) to testify about the possible ways in which different inmates could meet in the Health Services Unit or other places and how the inmates could communicate with one another even if not in the same unit. This issue is very relevant to the trial because some government witnesses were testifying to the fact that they had overheard conversations among the defendants in the HSU and other places of the institution. Judge Fuste had previously issued an order for all defense counsel to inspect and tour different areas of the institution in which the meetings among the defendants allegedly took place. Other staff members were also subpoenaed (i.e. ISM, Recreation Specialist) to authenticate records of movement of inmates to court and to testify about the delivery of newspapers to the Unit. The delivery of newspapers was important because defendants knew details of the murder that were only published in one newspaper that takes from two to three days to arrive at the institution because the inmates have individual subscriptions to it and they are delivered by regular mail. The prosecution rested. Trial is expected to end May 4 or 5.

AUSA: John Teakell and Mike Fernandez

2. United States v. Jaime Rosado Rosario Crim. No. 97-049
(JAF), D.P.R.

On April 24, 1998, the Honorable Jose A. Fuste convened a meeting among defense counsels (approximately 7), AUSAs and GUA Attorney Alma Lopez to discuss the need for additional records in the above referenced case. Defense counsel as well as the AUSA had made voluminous requests for records (entries of visits in Legal and Social Visitors logbooks) dating back to 1996 through the present. There were some discrepancies in the records submitted pursuant to the Government's requests and the defense counsels. All information responsive to the requests had been provided, but some pieces of data addressed more than one request. Cross referencing was not always included. MDC was constrained from discussing defense counsel's request with AUSAs because the Court had specifically instructed MDC that this information was not to be discussed with US Attorney's Office. Judge Fuste ordered production of unredacted copies of the logbooks. It was explained to the judge that this production would compromise the privacy rights of the other inmates whose names appeared in the pages that would satisfy the request. The judge indicated that in order to safeguard those inmates' privacy rights, only two copies of the records would be made (one of AUSAs and the other for the defense counsels). These records could not be reproduced by counsel and upon completion of the trial, these copies as well as the copies given to the jury would be returned to the court for their destruction.

3. U.S.A. vs. William Raymond Hock, 4:97cr75-RH, (N.D.Fla.)

This officer is charged with violating 18 USC §2243(b), sexual abuse of an inmate. While the Office of Inspector General is handling the lead on the case, Warden Greer has indicated he wants Paralegal Dan Rouse to attend to represent the interests of the institution. Thirteen (13) staff members have been subpoenaed by the defense. Trial has been delayed until June 1.

III. TRAVEL AND LEAVE SCHEDULE FOR May 1998:

Sherree L. Sturgis
Travel - None
Annual Leave - May 1, 1998

Van Vandivier

Travel - 5-11 to 5-20, MSTC, DHO Training as Resource Personnel canceled because the absence of two other attorneys out of the office at the same time.

Earl Cotton

Travel - None Scheduled
Annual Leave - None scheduled
Military Leave 4-27 to 5-18

Patricia DeJuneas - last day in office 5-8.

Gere Gooden

Travel - None scheduled
Annual Leave - None scheduled

Saku Papino - TDY to ATL 5-4 to 5-8

IV. Other Matters

a. **P.R. Department of Agriculture's Retention of foodstuff ordered by MDC**

On April 7, 1998, the P.R. Department of Agriculture stopped a shipment of chicken, fish and coffee ordered by MDC Guaynabo because the coffee is a protected good under federal laws in the Puerto Rican market. As a result, the importer is required to pay a tariff in order to bring the coffee to Puerto Rico and must have license in order to import coffee into P.R. One of the main controversies in this matter was, that for purposes of the statute, the definition of importer encompassed anyone "causing" the goods to be brought to Puerto Rico. MDC Guaynabo had ordered the foodstuff and therefore had "caused" the goods to be brought to PR and in accordance with the definition of statute, MDC was the importer responsible for paying the coffee tariff. Our position was that the terms of the sales contract clearly indicated that the shipper (Coast to Coast) was responsible for bringing the goods to MDC Guaynabo, therefore the shipper would be responsible for making the customs entry. After meeting with the Department of Agriculture, several conference calls with the Deputy Regional Counsel, Commercial Law Branch, U.S. Customs, P.R. Department of Agriculture, Coast to Coast (shipper) and the U.S. Attorney's Office, this matter was resolved by Coast to Coast taking the coffee back to the United

States and the rest of the goods being delivered to MDC Guaynabo. (A good example of the "Nothing is simple" rule.)

- B. Regional Office move to commercial office space is presently scheduled for the last week of June or first week of July.

cc: Regional Director and Deputy Regional Director, SER
All Regional Counsel and Associate General Counsel

UNITED STATES GOVERNMENT

memorandum

Date: June 11, 1998

Reply to Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30315

Subject: Monthly Report - May 1998

To: Wallace H. Cheney, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104						
Rec's in month	39	55	88	38	63							
Recons. rec'd	0	3	4	2	1							
Ans'd in month	22	49	69	52	46							
Pending at end	117	118	107	103	111							
Over 180 days	6	3	1	3	2							

B. Tort Claim Investigation Status: As of May 31, 1998

	AT L	COL	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAC
PENDING	44	13	1	1	4	3	4	6	6	1	0	8	7	1.
>60 DAYS	2	0	0	0	0	0	0	0	0	0	0	0	0	0

C. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18	19	21	15						
Rec'd in month	21	9	18	19	15							
Ans'd in month	10	18	22	26	41							
Pending at end	24	21	19	25	15							
Over 30 days	4	4	3	6	2							

D. FOIA Requests for records: As of May 31, 1998

	ATL	C O L	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	3	2	0	0	0	3	0	0	2	0	0	2	3	0
>30 DAYS	1	0	0	0	0	0		0	1*	0	0	0	0	0

*Info due from FDC OAK -originally assigned to MNA however, inmate not there and discovered request should have gone to OAK - attempted to respond from this region in order to respond timely. Having difficulty getting records from OAK.

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537							
New Cases	16	2	18	15	15							
Habeas Corpus	10	1	9	6	8							
FTCA	0	0	2	2	2							
vens	5	1	6	5	5							
her	1	0	1	2	0							
Bivens/FTCA	0	0	0	0	0							
Lit Reports	11	1	2	5	5							
Cases Closed	77	9	8	5	13							

B. SETTLEMENTS AND AWARDS: None

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. U.S. Ex rel. Jeffery Slavkovsky v. Susan Kirk and William Buchannann
Case No. CV298-100 (S.D. Ga.) (**FILED UNDER SEAL**)

This is new case, a Qui Tam civil complaint filed under the False Claims Act by a former PHS dentist who was assigned at FCI Jesup. He alleges that a contract Pharmacy Assistant fraudulently billed the institution for services she had not rendered with the full knowledge and cooperation of the Health Systems Administrator. The U.S. Attorney's Office has requested that we advise them of BOP's perspectives regarding whether there is merit to the relator's allegations and whether the United States should, therefore, intervene and pursue the action.

D. RELIGIOUS CASES: No new cases.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None

G. CRIMINAL CASES:

1. U.S.A. vs. William Raymond Hock, 4:97cr75-RH, (N.D.Fla.)

This officer is charged with violating 18 USC §2243(b), sexual abuse of an inmate. While the Office of Inspector General is handling the lead on the case, Warden Greer has indicated he wants Paralegal Dan Rouse to attend to represent the interests of the institution. Thirteen (13) staff members have been subpoenaed by the defense. Trial began on June 1 was recessed on June 4 to June 16. The recess was necessary as Hock's attorney attempted to introduce physical evidence of which the government had no prior knowledge, specifically, photographs of the defendant's penis which showed an alleged birthmark which, according to his girlfriend's testimony, is very obvious. The inference to the jury is that the inmates should have noticed this if the sexual acts occurred as alleged. Hock is scheduled to be examined by a skin doctor to determine if the "mark" is real, how long it may have been there, is it obvious, etc.

III. TRAVEL AND LEAVE SCHEDULE FOR June 1998:

Sherree L. Sturgis

Travel - June 9, 1998-Tallahassee; June 19 Central Office
(Legal Eagle workgroup meeting)
Annual Leave - June 18

Van Vandivier

Travel - None
Annual Leave - June 12

Earl Cotton

Travel - None Scheduled
Annual Leave - June 10-12

Gere Gooden

Travel - None scheduled

Annual Leave - None scheduled

Loretta Rich, Paralegal Trainee is scheduled to arrive during the week of June 22.

Jeffrey Sugg, Honors Attorney is scheduled to arrive August 17.

IV. Other Matters

A. Regional Office move to commercial office space is presently scheduled for June 22. We expect to be in the process of moving from June 16 on. We plan to have the existing phone numbers remain available during the move. If you have trouble, call Terry Collins at USP, Atlanta. She will be covering for any gap periods. We will send out Email to everyone when we are actually in and operational. Thanks for your patience.

B. City of Tallahassee, Connor Blvd./Park Ave. Realignment.
- I have been working with City officials for months to try to negotiate a deal for allowing them the use of about 4 acres of land at one corner of the institution property to realign these two roads. The realignment is necessary to permit development of a large tract of land behind the institution for housing projects. The realignment requires relocation of the institution's main staff/visitor and warehouse/staff housing entrances and the upgrading and redirection of roads on the institution property. I believe we are finally close to agreeing on a plan.

cc: Regional Director and Deputy Regional Director, SER
All Regional Counsel and Associate General Counsel

UNITED STATES GOVERNMENT

memorandum

Date: July 8, 1998

Reply to: Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30331

Subject: Monthly Report - June 1998

To: Wallace H. Cheney, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104	101					
Rec's in month	39	55	88	38	63	36						
Recons. rec'd	0	3	4	2	1	0						
Ans'd in month	22	49	69	52	46	58						
Pending at end	117	118	107	103	111	101						
Over 180 days	6	3	1	3	2	3						

B. Tort Claim Investigation Status: As of June 30, 1998

	ATL	C O L	E D G	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	38	9	0	0	1	4	4	5	4	7	1	0	4	6	17
>60 DAYS	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0

C. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18	19	21	15	31					
Rec'd in month	21	9	18	19	15	24						
Ans'd in month	10	18	22	26	41	14						
Pending at end	24	21	19	25	15	7						
Over 30 days	4	4	3	6	2	2						

D. FOIA Requests for records: As of June 30, 1998

	ATL	C O L	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	6	4	0	4	0	3	0	0	5	2	0	2	5	0
>30 DAYS	2	0	0	0	0	0	0	0	0	0	0	0	0	0

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537	542						
New Cases	16	2	18	15	15	10						
Habeas Corpus	10	1	9	6	8	8						
FTCA	0	0	2	2	2	0						
Bivens	5	1	6	5	5	2						
Other	1	0	1	2	0	0						
Bivens/FTCA	0	0	0	0	0	0						
Lit Reports	11	1	2	5	5	0						
Cases Closed	77	9	8	5	13	5						

B. SETTLEMENTS AND AWARDS:

7-7-98 Adverse Judgement, Chilton v. US, FMOE, 4:96CV02533MLM: \$781,000. Wrongful death, FTCA, suicide after change in antidepressant medication

7-7-98 Recommended Settlement in Sulayman v. US, FGAS, 297-118, EEO case involving doctor at JES, \$70,000 recommended.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Figueroa v. Franco, et al.

Case No. 95-1791 (D. Puerto Rico)

We are very pleased to advise that the district court has vacated its previous judgment for \$1.00 against the individual defendants and dismissed this case with prejudice. This is the Bivens action from Puerto Rico where the court had found that two defendants violated the right of the inmate to receive a copy of the DHO report in a timely manner, and awarded \$1.00 damages against the defendants on summary judgment. Pursuant to a Rule 60(b)(6) motion, the court reconsidered and vacated its previous order.

D. RELIGIOUS CASES: No new cases.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None

G. CRIMINAL CASES:

FCI, Edgefield has started its Legal Services life early and with a bang by having a walk away from the work cadre.

FCI, Yazoo has referred two relatively minor drug possession cases for prosecution on the theory that we should begin with a strong statement. Both were accepted. A good start.

1. DEFENDANTS(S): David Shane Shelby #05374-081

Institution Tracking No.: ATL-7143

Name of Case: US v. David Shane Shelby

Court: NDGA

Docket No.: 1:98-CR-0020

Institution: ATL

Date of Offense: 7/23/97

Type of Case: Criminal Prosecution

Description: Inmate Shelby held Ms. D. Ross at knife point in the food service department.

Special Monitoring: Not assigned to special monitoring

Status of Referral: Accepted

Update: Inmate Shelby is scheduled to enter a guilty plea to Assault on a Correctional Officer on 7/20/98.

Assigned to: AUSA: Jan Jenkins FBI: Daron Cheney

III. TRAVEL AND LEAVE SCHEDULE FOR July 1998:

Sherree L. Sturgis

Travel -July 26-July 31, 1998; DC-Attorney and Paralegal Training

July 15 - Settlement Conference, Savannah, Sulayman v. US
Annual Leave - July 6

Van Vandivier

Travel -July 26-July 31, 1998; DC-Attorney and Paralegal Training

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Annual Leave -

Earl Cotton

Travel - July 5, 1998-July 8, 1998; St. Louis-Trial
Chilton v. US

Annual Leave -

Gere Gooden

Travel - None

Annual Leave - July 3, 1998

Loretta Rich-New Paralegal Trainee

Travel - July 5- July 17, 1998-Denver-Paralegal Training

Annual Leave - None

IV. Other Matters

- a. 7-24 Closing date for SERO FOI paralegal announcement
- b. 7-31 Former Regional Director, now USPO Jerry Williford retires
- c. On June 30, 1998, Alma Lopez, Attorney Advisor, GUA, attended seminar offered to all Public Defenders and court appointed attorneys to discuss issues and difficulties attorneys encounter when visiting the MDC. New legal visiting procedures were thoroughly discussed. The attorneys were given a list of 10 DO's and DON'Ts When Visiting the MDC to avoid difficulties in the processing of their legal visits. Attorneys raised concerns about the health services offered to inmates, processing of their visits and the delays in bringing the inmates to the visiting room. The meeting ended in a positive note.

cc: Regional Director and Deputy Regional Director, SER
All Regional Counsel and Associate General Counsel

UNITED STATES GOVERNMENT

memorandum

Date: August 5, 1998

Reply to: Sherree L. Sturgis, Regional Counsel, Southeast Region
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30331

Subject: **Monthly Report - July 1998**

To: **Wallace H. Cheney**, General Counsel and
 Assistant Director, Federal Bureau of Prisons
 Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104	101	88				
Rec's in month	39	55	88	38	63	36	74					
Recons. rec'd	0	3	4	2	1	0	3					
Ans'd in month	22	49	69	52	46	58	54					
ending at end	117	118	107	103	111	101	88					
over 180 days	6	3	1	3	2	3	0					

B. Tort Claim Investigation Status: As of July 31, 1998

	ATL	C O L	E D G	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TIA	YAZ
PENDING	36	5	1	0	1	4	4	5	5	9	1	0	4		0
>60 DAYS	10	0	0	0	0	0	1	3	0	0	0	0	2		0

C. FOI/Privacy Act Requests - As of July 31, 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18	19	21	15	31	27				
Rec'd in month	21	9	18	19	15	24	24					
Ans'd in month	10	18	22	26	41	14	33					
Pending at end	24	21	19	25	15	7	27					
Over 30 days	4	4	3	6	2	2	9					

D. FOIA Requests for records: As of July 31, 1998

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	AT L	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YA Z
PENDING	4	3	0	0	0	2	2	0	0	0	0	2	1	0
>30 DAYS	0	0	0	0	0	1	0	0	0	0	0	1	0	0

II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537	542	539	531				
New Cases	16	2	18	15	15	10	11					
Habeas Corpus	10	1	9	6	8	8	6					
FTCA	0	0	2	2	2	0	1					
Bivens	5	1	6	5	5	2	4					
Other	1	0	1	2	0	0	0					
Bivens/FTCA	0	0	0	0	0	0	0					
Lit Reports	11	1	2	5	5	0						
Cases Closed	77	9	8	5	13	5	14					

B. SETTLEMENTS AND AWARDS:

Pamela Ruth Chilton, et al. v. United States, 4:96-CV-2533 CDP
(E.D. Missouri)

Trial was held in this case where the inmate committed suicide at FCI Jesup shortly after arrival and his prescription for was changed from Xanax to Lorazepam. The court found that the Government was negligent and awarded damages to the plaintiffs in the amount of \$781,000. This consisted of \$725,000 lost income, \$50,000 intangible value and \$6,000 funeral expenses.

Sulayman v. U.S., FGAS, 297-118 - Settled for \$55,000 at settlement conference on 7-15.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

Salvador Magluta v. F. P. Sam Samples, et al., App No. 97-8417
(11th Cir.)

The defendants reply brief was submitted to the court, arguing that the district court's dismissal of the plaintiff's Bivens action on the basis of the fugitive from justice doctrine was permissible and should be upheld. Maria Simon, DOJ Appellate Attorney, prepared and filed the brief for the defendants. We await the court's decision.

D. RELIGIOUS CASES:

E. ENSIGN AMENDMENT CASES:

F. PLRA 1915 DISMISSALS: NONE

G. CRIMINAL CASES:

No significant cases to report.

III. TRAVEL AND LEAVE SCHEDULE FOR August 1998:

Sherree L. Sturgis

Travel - None

Annual Leave - None

Van Vandivier

Travel - None

Annual Leave - August 17, 25-31

Earl Cotton

Travel - August 30-September 2, CSRE training Denver

Annual Leave - None

Jeffrey Sugg - Honors Attorney

Travel - None

Annual Leave - None

Gere Gooden

Travel - None

Annual Leave - August 10

Loretta Rich-New Paralegal Trainee

Travel - None

Annual Leave - None

Beverly Snell - Legal Intern

Travel - 8-20-21 Assist AUSA Porto v. US, FFLS

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Annual Leave -August 14

IV. Other Matters

Orientation for new wardens, 7-13 by Sturgis & Vandivier

cc: Regional Director and Deputy Regional Director, SER
All Regional Counsel and Associate General Counsel